

Received 11/28/11
From Mr. Han Gim.

Interview Summary Record

A telephone call was placed by William F. Smith to the Office of Technical Center Director Wynn Coggins to discuss the Office action of September 8, 2011. SPE Jeffery Smith called on October 5, 2011, indicating that TC Director Coggins asked him to review the Office action and return the call. SPE Smith was informed that we were concerned that this case has been examined for an extended period of time and that we have been confronted with ever changing positions from the examiner. In addition it was pointed out that the new rejection under 35 U.S.C. § 112, second paragraph, was not understandable, in part, because it included only the independent claims. SPE Smith was also informed that the new rejection under 35 U.S.C. § 102 was questionable on its face as the examiner cobbles together elements from separate, discrete embodiments of US 2002/0183059 (Noreen) into an embodiment nowhere disclosed in Noreen said to be anticipatory. Citation was made to *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359 (Fed. Cir. 2008) for the proposition that “it is not enough that the prior art reference...includes multiple, distinct teachings that the artisan might somehow combine to achieve the claimed invention.” SPE Smith indicated that he would discuss the Office action with Examiner Fadok and get back in touch.

SPE Smith telephoned William F. Smith on October 17, 2011. During that telephone conversation SPE Smith indicated that Examiner Fadok agreed to withdraw the rejection under 35 U.S.C. § 112, second paragraph, but would maintain the rejection under 35 U.S.C. § 102. SPE Smith explained that Examiner Fadok is now relying upon paragraph [0004] of Noreen in support of the anticipation rejection. SPE Smith was informed that that was the precise behavior of the examiner with which we were frustrated in that Examiner Fadok does not directly answer our arguments but points to other disclosures as further support for the rejection. SPE Smith was informed that any additional reliance on paragraph [0004] of Noreen in support of the pending anticipation rejection would be a new ground of rejection. Citation to the recent *In re Leithem* and *In re Stepan Co.* cases was made in support of this proposition.

SPE Smith we should prepare a formal response to the Office action including the examiner's new reliance on paragraph [0004]. SPE Smith was requested to inform TC Director Coggins of the substance of the conversation and was informed that a follow up phone call will be placed to TC Director Coggins.

DRAFT

A telephonic interview was held on November 8, 2011, between William F. Smith, TC Director Coggins and SPE Smith. TC Director Coggins stated that the current Office action would be vacated and the rejections under 35 U.S.C. §§ 112, second paragraph, and 102 would be withdrawn and that the examiner will issue a new Office action which will set forth a new obviousness rejection. It was agreed that applicant will submit this Interview Summary Record when a response to the forthcoming Office action is filed.